IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4275 OF 2006

Nashik Mahanagarpalika Shramik Sangh — Petitioner
vs.
Nashik Municipal Corporation & ors. — Respondents

Mr.Bhavesh Parmar i/b.Mrs.S.V.Deshmukh for the petitioner.

CORAM : R. M. LODHA &
A.S.BAGGA, JJ.

DATED : 30th June, 2006

P.C.

We heard Mr.Bhavesh Parmar, the advocate for the petitioner.

2. The present petition has been filed for and on behalf of 82 workers who are said to have been employed by the Nasik Municipal Corporation through contractors. The case of the petitioner is that they are in fact the employees of the Nasik Municipal Corporation and that contractors are only on paper.

3. We were informed by the advocate for the petitioner that on behalf of the concerned workers, the conciliation proceedings have started before the Deputy Commissioner of Labour, nasik. Relying upon the judgement of this Court in the case of Nashik Mahanagarpalika Shramik Sangh v. Nasik Municipal

Corporation & ors (Writ Petition No.6590/2004) decided on 7th September, 2004 and the order of the Supreme Court dated 10th May, 2005 in Petition for Special Leave to Appeal (Civil Appeal No.308/2005) and other connected matters, the advocate for the petitioner submits that until the industrial dispute is adjudicated, the services of the concerned workers be protected.

4. In our considered view, this writ petition is wholly misconceived in view of the law laid down by the Supreme Court in the case of Steel Authority of India Ltd. & ors. v. National Union Waterfront Workers & ors., (2001) 7 SCC 1. The Supreme Court in paragraph 125 of the report laid down the legal position thus:

> "125. The uphot of the above discussion is outlined thus:
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> (1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the

State in which the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein economine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) After consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

. (i) conditions of work and benefits provided for the contract labour in the establishment in question, and

. (ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgement and subject to the clarification

that on the basis of this judgement no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case shall hold god and that the same shall not be set aside, altered or modified on the basis of this judgement in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise

the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall given preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

5. Obviously, as to whether the concerned workmen are in direct employment of the Nasik Municipal Corporation or that they are employees of the contractors have to be adjudicated through the process of industrial adjudication as laid down by the Supreme Court. The controversy raised, thus, by the petitioner on behalf of the 82 workers that the said workers are in employment of the respondent no.1 through sham and bogus contractors who are existent on paper, can only be adjudicated before the industrial Court and not in extraordinary jurisdiction under Article 226 of the Constitution of India.

6. The order dated 7th September, 2004 relied upon by

the advocate for the petitioner has no application in the facts and circumstances of the present case. The directions given by the Division Bench read thus:

> "8. Having considered the rival contention, in our view, the following order shall meet the ends of justice.
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> (i) The Asstt. Labour Commissioner shall prepare a common seniority list of 450 workers as per their priority subject to condition that the workmen must have been engaged in Ghantagadi activity on July, 2003 or thereafter. The workmen whose names are included in the list shall be offered work as per seniority.
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> (ii) The 1st Respondent is at liberty to finalise the tenders. However, this must be on the condition that the new contractors engage the contract workers as per the seniority list prepared by the Asstt. Labour Commissioner and any right of the workman already accrued will not be affected. If the new contractors are not available the 1st Respondent shall get the work done departmentally but only through the contract workers as per the seniority list prepared by the Asstt. Labour Commissioner.
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> (iii) Looking to the nature of work the workmen should be provided with good quality (a) raincoat with cap, (b) gumboots and (c) hand gloves. It is clarified that it will be for the Nashik Municipal Corporation to ensure, if they can, that the contractors so provided. However, if the Corporation cannot so ensure then the Corporation must so provided themselves.
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> (iv) The contract workers shall be paid the minimum wages as per the Notifications issued by the State Govt. from time to time and the payment shall be disbursed in presence of the officer of the Corporation.

(v) On the occasion of Diwali, every worker who has put in more than 6 months of service shall be paid ex-gratia and bonus as per the circular.

(vi) It will be open for the contract workers to produce the proof of their employment in Ghanta Gadi project before the Asstt. Labour Commissioner, Nashik who shall finalise the list of the workers as per their seniority in the right of this order."

7. In paragraph 9, the Division Bench itself clarified that they have not expressed any opinion about the claim of permanency of the contract workers and that issue will be adjudicated on its own merits in the reference pending before the Industrial Tribunal. Besides that admittedly the aforesaid order of this Court is under challenge before the Supreme Court in a Petition for Special Leave to Appeal (Civil Appeal No.308/2005) and leave has been granted therein.

8. We are, thus, satisfied that the writ petition does not deserve to be entertained.

9. Dismissed in limine.

(R.M. LODHA,J.)

(A.S. BAGGA,J.)